

Public Defense

Mission

Public Defender of Indiana: To assure fundamental fairness in criminal and juvenile cases resulting in incarceration by providing factual and legal investigation in all capital cases and in juvenile and non-capital cases at the indigent inmate's request, and representation at hearing and on appeal when the post conviction action has arguable merit, at state expense. To provide competent counsel for trial and direct appeal at county expense, when local counsel cannot represent the indigent defendant. The **Indiana Public Defender Council** provides training and research support to public defenders across the state. The **Public Defender Commission** promulgates and assures compliance with standards for 1) all capital defense, reimbursing counties for 50% of capital defense costs, and 2) all felony and juvenile cases, reimbursing participating counties 40% of felony and juvenile defense costs.

Summary of Activities

Legal services for indigent defendants are provided by counties at the trial and direct appeal level, at county expense. The **Public Defender of Indiana** provides counsel at the post-conviction level.

These agencies constitute an integral part of Indiana's system for guaranteeing the fairness of criminal proceedings resulting in loss of life or liberty. Indiana has a long history of recognizing and respecting the right of any individual accused of a crime to the assistance of counsel. Indiana's Constitution explicitly establishes the right to counsel for the accused at trial and guarantees the right to appeal, with the assistance of counsel, in all criminal cases. The Public Defender's clients are indigents sentenced to death whose sentences have been affirmed by the Indiana Supreme Court on direct appeal, and all others serving sentences in the **Department of Correction** who file petitions seeking relief.

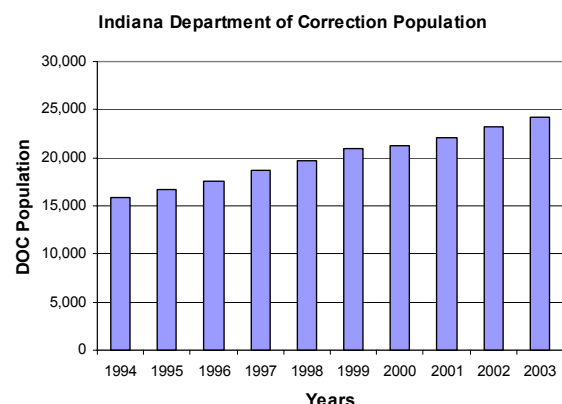


Indiana afforded publicly paid counsel to those accused of crimes and financially unable to hire an attorney long before this was required by the United States Supreme Court — *Webb v. Baird*, 6 Ind. 13 (1854). Indiana was one of the first states in this nation to provide for review in criminal cases where no direct appeal was available, in *Sanders v. State*, 85 Ind. 318 (1883), where the accused pled guilty to avoid imminent lynching by a mob. Post-conviction relief in Indiana is available to those who plead guilty or who have appealed without being able to raise all challenges to their convictions or sentences on direct appeal. The Public Defender of Indiana represents all those sentenced to death who cannot hire counsel and investigates the cases of other indigent inmates who seek review, advising them as to the merit of their cases and litigating those with merit. The Public Defender Commission assists counties financially by providing partial reimbursement for public defense costs from the Public Defense Fund. All counties are eligible for reimbursement of capital expenses. Counties must establish programs with standards for delivery of defense services to receive 40% reimbursement of defense costs in felony and juvenile cases.

External Factors

The primary factors affecting the Public Defender Council and the Public Defender Commission are overall crime rates and charging decisions made by prosecutors, particularly when prosecutors seek the death penalty. The Commission and Defense Fund are also affected by the number of counties qualifying for 40% reimbursement of non-capital defense costs. A factor that affects the Public Defender of Indiana is the steadily increasing population of the **Indiana Department of Correction**.

The population of the Indiana Department of Correction has increased from under 8,000 in 1981 to 21,854 in May, 2003. The Public Defender is also affected by federal law regarding habeas corpus actions.



Evaluation and Accomplishments

While the Public Defender's caseload has grown as a result of the number of inmates filing petitions for post-conviction relief (640 such petitions were received in FY 02-03), the office strives to provide timely case review and competent representation in meritorious cases. Since receiving the discretion to refuse to litigate cases without arguable merit, after full factual and legal investigation, in 1991, 2,600 cases have been closed as without merit. Capital cases have been expeditiously investigated and litigated pursuant to Supreme Court order and there has been less delay in non-capital case evaluation and litigation.



This work has resulted in significant relief for a number of clients. Fourteen capital clients have been permanently removed from death row through the efforts of the capital deputies. Most importantly, investigation and representation have directly resulted in the release of at least four totally innocent individuals: one who was sentenced to death in 1983, one who was incarcerated eight years for rape, one who served seventeen years for a murder he had not committed, and another who served four years for sex offenses committed by two others. Two of these cases involved DNA testing.

The number of counties participating in the Public Defense Fund program has increased from 13 in January 1999 to 48 in March, 2003. Reimbursements have more than doubled since 1990. By March, 2003, counties had received \$5.58 million in capital case reimbursements and \$21.73 million in non-capital case reimbursement.

Plans for the Biennium

Funding will continue for the Public Defender Commission, in order to accommodate current county reimbursement and projected increases in the number of counties participating in the Public Defense Fund assistance program. The Fund has been required to prorate non-capital reimbursements due to funding limitations.

